

# EXHIBIT 96

## Little Rock, A

Page 336

## UNITED STATES DISTRICT COURT

## DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL INDUSTRY )

AVERAGE WHOLESALE PRICE )

LITIGATION )

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United States of America ex rel.) MDL No. 1456

Ven-A-Care of the Florida Keys, )

Inc. v. Abbott Laboratories, ) Civil Action

Inc., Civil Action No. 06- ) No. 01-12257-PBS

11337-PBS; and United States of )

America ex rel. Ven-A-Care of ) Honorable

the Florida Keys, Inc., v. Dey, ) Patti B. Saris

Inc., et al., Civil Action No. )

05-11084-PBS; and United States )

of America ex rel. Ven-A-Care )

of the Florida Keys, Inc., v. )

Boehringer Ingelheim Corp., et )

al., Civil Action No. 07-10248- )

PBS )

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## Little Rock, A

Page 337		Page 339	
1	December 11, 2008	1	INDEX CONTINUED: PAGE
2	Volume II	2	Exhibit Roxane 031 HHC010-0857 to 0860 405
3	VIDEOTAPED DEPOSITION OF SUZETTE BRIDGES,	3	Exhibit Roxane 032 HHC010-0849 to 0852 410
4	produced, sworn, and examined on the 11th day of	4	Exhibit Roxane 033 HHC010-0842 to 0843 415
5	December, 2008, between the hours of nine o'clock	5	Exhibit Roxane 034 HHC010-0802 to 0807 417
6	in the forenoon and six o'clock in the evening of	6	Exhibit Roxane 035 HHC010-0798 to 0807 418
7	that day, at the offices of United States Attorneys'	7	Exhibit Roxane 036 ARK00003068 to 3071 419
8	Office, 425 West Capitol, Suite 500, Metropolitan	8	Exhibit Roxane 037 ARK00003245 to 3247 421
9	Building, Little Rock, Arkansas, before BRENDA	9	Exhibit Roxane 038 ARK00003267 to 3272 423
10	ORSBORN, a Certified Court Reporter within and for	10	Exhibit Roxane 039 ARK00002256 to 2264 424
11	the State of Missouri, in a certain cause now	11	Exhibit Roxane 040 HHC014-0232 to 0235 428
12	pending before the United States District Court,	12	Exhibit Roxane 041 ARK00000054 to 0055 430
13	District of Massachusetts, In re: Pharmaceutical	13	Exhibit Roxane 042 ARK00000140 to 0146 431
14	Industry Average Wholesale Price litigation.	14	Exhibit Roxane 043 ARK00000133 432
15		15	Exhibit Roxane 044 ARK00006568 to 6585 435
16		16	Exhibit Roxane 045 ARK00006586 to 6632 437
17		17	Exhibit Roxane 046 ARK00006495 to 6502 440
18		18	Exhibit Roxane 047 ARK00006504 to 6519 440
19		19	Exhibit Roxane 048 VACMDL75947 to 75951 446
20		20	Exhibit Roxane 049 VACMDL74706 to 74720 446
21		21	Exhibit Abbott-ARK 001 (Subpoena) 465
22		22	Exhibit Abbott-ARK 002 HHC024-0672 to 0674 503
Page 338		Page 340	
1	INDEX OF EXAMINATION	1	INDEX CONTINUED: PAGE
2		2	Exhibit Abbott-ARK 003 ARK00000115 to 0118 511
3	Page	3	Exhibit Abbott-ARK 004 HHC013-0554 to 0555 516
4	Continued Questions by Mr. Reale ..... 345	4	
5	Questions by Mr. Berlin ..... 465	5	
6	Questions by Ms. Mangiardi ..... 531	6	
7		7	
8	INDEX OF EXHIBITS	8	
9	Exhibit Roxane 017, HHD014-0764 to 0782 345	9	
10	Exhibit Roxane 018 (Cover Letter) 345	10	
11	Exhibit Roxane 019 HHC902-1091 353	11	
12	Exhibit Roxane 020 HHC011-2260 to 2268 359	12	
13	Exhibit Roxane 021 HHD006-0231 to 0235 367	13	
14	Exhibit Roxane 022 HHD127-0119 to 0123 371	14	
15	Exhibit Roxane 023 HHC011-2189 to 2190 378	15	
16	Exhibit Roxane 024 HHC010-1007 to 1008 380	16	
17	Exhibit Roxane 025 HHD084-0411 to 1006 383	17	
18	Exhibit Roxane 026 HHC010-0969 to 0970 387	18	
19	Exhibit Roxane 027 HHC010-0956 390	19	
20	Exhibit Roxane 028 HHC010-0775 to 0776 391	20	
21	Exhibit Roxane 029 HHC902-0711 to 0713 396	21	
22	Exhibit Roxane 030 HHC010-0868 402	22	

2 (Pages 337 to 340)

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<p style="text-align: right;">Page 341</p> <p>1                   A P P E A R A N C E S</p> <p>2           For the United States:</p> <p>3           Ms. Laurie A. Oberembt (By Telephone)</p> <p>4           U.S. Department of Justice</p> <p>5           Commercial Litigation Fraud</p> <p>6           P.O. Box 261</p> <p>7           Ben Franklin Station</p> <p>8           Washington, D.C. 20044</p> <p>9           (202)514-3345</p> <p>10          Laurie.oberembt@usdoj.gov</p> <p>11</p> <p>12          For the Witness and Arkansas Department of</p> <p>13          Human Services:</p> <p>14          Ms. Carmen Mosley-Sims</p> <p>15          Arkansas Department of Human Services</p> <p>16          700 Main Street, Slot S-260</p> <p>17          Little Rock, Arkansas 72203</p> <p>18          (501)602-1366</p> <p>19          Carmen.mosley-sims@arkansas.gov</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 343</p> <p>1           APPEARANCES CONTINUED:</p> <p>2</p> <p>3           For the Defendant Boehringer Ingelheim</p> <p>4           Corp.:</p> <p>5           Mr. John W. Reale</p> <p>6           Kirkland &amp; Ellis, LLP</p> <p>7           200 East Randolph Drive</p> <p>8           Chicago, Illinois 60601</p> <p>9           (312)861-3452</p> <p>10          Jreale@kirkland.com</p> <p>11</p> <p>12          The Videographer:</p> <p>13          Mr. Keith Montgomery</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 342</p> <p>1           APPEARANCES CONTINUED:</p> <p>2</p> <p>3           For the Defendant Abbott:</p> <p>4           Mr. Eric P. Berlin (By Telephone)</p> <p>5           Jones Day</p> <p>6           77 West Wacker</p> <p>7           Chicago, Illinois 60601</p> <p>8           (312)782-3939</p> <p>9           epberlin@jonesday.com</p> <p>10          For the Defendants Dey, Inc.; Dey, L.P.</p> <p>11          and Dey, L.P., Inc.:</p> <p>12</p> <p>13          Ms. Anne M. Mangiardi (By Telephone)</p> <p>14          Kelley Drye &amp; Warren, LLP</p> <p>15          100 Park Avenue</p> <p>16          New York, New York 10178</p> <p>17          (212)808-7898</p> <p>18          Amangiard@kellydrye.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 344</p> <p>1           IT IS HEREBY STIPULATED AND AGREED, by</p> <p>2           and between counsel for Plaintiff and counsel for</p> <p>3           Defendant, that the VIDEOTAPED DEPOSITION of</p> <p>4           SUZETTE BRIDGES may be taken in shorthand by Brenda</p> <p>5           Orsborn, a Certified Shorthand Reporter, and</p> <p>6           afterwards transcribed into typewriting; and the</p> <p>7           signature of the witness is expressly not waived.</p> <p>8                               * * * * *</p> <p>9           VIDEOGRAPHER: We're on the record.</p> <p>10          Today's date is December 11, 2008, and the time is</p> <p>11          9:00 a.m. This is the continuation of the videotaped</p> <p>12          deposition of Suzette Bridges.</p> <p>13          MR. REALE: Good morning, Ms. Bridges.</p> <p>14          THE WITNESS: Good morning.</p> <p>15          MR. REALE: I do want to do a roll call</p> <p>16          for everybody on the phone, just to be safe.</p> <p>17          VIDEOGRAPHER: Would all the attorneys</p> <p>18          please introduce themselves?</p> <p>19          MR. REALE: John Reale on behalf of the</p> <p>20          Roxane Defendants</p> <p>21          MS. MOSLEY-SIMS: Carmen Mosley-Sims on</p> <p>22          behalf Arkansas Department of Human Services.</p>

3 (Pages 341 to 344)

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<p style="text-align: right;">Page 357</p> <p>1   OIG's 1984 report that discussed the acquisition 2   cost of pharmacies in Arkansas. Do you recall 3   that? 4   A. I recall looking at a lot of documents 5   yesterday. I can't say that I specifically 6   remember that particular one, but I know we 7   looked at a lot of documents referring to 8   acquisition costs yesterday. 9   Q. Well, just so that you don't have to 10   take my word for it, let's pull that out so you 11   can see what I'm referring to. This was -- I 12   believe was Roxane Exhibit 9. Is that the 13   number you have? 14   A. Yes. 15   Q. Right. And we examined Roxane Exhibit 16   9 yesterday -- 17   A. Okay. We did. 18   Q. -- which was the report that talked 19   about the acquisition costs of pharmacies in 20   Arkansas, among other states, do you recall that? 21   A. I do. 22   Q. And we looked at the various ranges of</p>	<p style="text-align: right;">Page 359</p> <p>1   typically greater than the discounts when 2   purchasing branded drug? 3   MS. OBEREMBT: Objection. 4   A. I can only make that assumption based 5   on the survey findings. The survey findings 6   generally show that -- and I'd have to look at 7   the survey again, that the variance on brand is 8   not as great on the variance on generics. I 9   mean, that's common knowledge. I'd guess you'd 10   say. 11   MR. REALE: Let me mark the next one. 12   A. A common assumption. Excuse me. Let 13   me rephrase that. 14   [Marked Exhibit Roxane 020] 15   Q. (By Mr. Reale) Roxane Exhibit 20 has 16   just been passed out. This is Bates Page 17   HHC011-2260 to 2268. And this is a letter from 18   the Arkansas Department of Human Services, and it 19   appears to be dated June 22nd, 1988, and it's 20   from Kenny Whitlock, Director at DHS, to Don 21   Hearn at HCFA in the regional office at Dallas, 22   Texas. This was another document, Ms. Bridges,</p>
<p style="text-align: right;">Page 358</p> <p>1   acquisition costs for pharmacies in Arkansas on 2   Page 9. 3   A. Uh-huh. Correct. 4   Q. So now back to Roxane Exhibit 19. 5   This letter in March of 1988, the -- HCFA's 6   regional office states that the average 7   difference between AWP and what pharmacists 8   generally paid in Arkansas and Texas was 12.53 9   percent below AWP. Do you agree that this 10   document reflects that? 11   A. Generally, it was 12.53, not on all 12   drugs. I will agree that the document says that. 13   Q. And, in fact, that the document says 14   that the survey performed by Dallas regional 15   office excluded antibiotic drugs, generic drugs 16   and drugs that were purchased directly from the 17   manufacturer? 18   A. So this would be strictly for brand 19   name drugs. This would not include any generics. 20   Q. And based on what we've seen, you would 21   expect that the discounts available for 22   pharmacies, when purchasing generic drugs, are</p>	<p style="text-align: right;">Page 360</p> <p>1   that was produced to us by the Federal Government 2   in this lawsuit. And if you look at the first 3   paragraph of this letter, it's a response from 4   Arkansas to concerns raised by HCFA. Do you 5   agree with that? 6   A. It's a clarification or a modification, 7   according to this. 8   Q. And it has been your experience, hasn't 9   it, that when Arkansas has submitted Plan 10   Amendments to CMS, from time to time they may ask 11   for additional information from the State, either 12   to support certain aspects of the Plan Amendment 13   or for other aspects. 14   A. For a State Plan Amendment, they can 15   request additional information. Is this in 16   reference to a State Plan Amendment? I don't 17   know the -- I mean, I don't know if this is in 18   reference to a State Plan Amendment. Let me 19   rephrase that. 20   Q. Now, if you would turn to the second 21   page of the cover letter, or excuse me, of the 22   letter. And at the top, there's something that</p>

7 (Pages 357 to 360)

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<p style="text-align: right;">Page 373</p> <p>1 survey.</p> <p>2 Q. On Page 4, we see the response of</p> <p>3 Arkansas to a question regarding what has helped</p> <p>4 or would help Arkansas overcome barriers to</p> <p>5 Medicaid drug cost containment listed above. Do</p> <p>6 you see that?</p> <p>7 MS. MOSLEY-SIMS: Objection, form.</p> <p>8 A. I'm sorry. Would do you repeat?</p> <p>9 Q. (By Mr. Reale) Sure. And Question 12</p> <p>10 has asked of the Respondent, "What has helped or</p> <p>11 would help your state to overcome barriers to</p> <p>12 Medicaid drug cost containment listed above?"</p> <p>13 And it refers to "potential barriers" listed</p> <p>14 above in the table. Do you see that?</p> <p>15 MS. OBEREMBT: Excuse me. This is</p> <p>16 Laurie. John, what's the day on this exhibit?</p> <p>17 MR. REALE: Laurie, it is undated.</p> <p>18 THE WITNESS: It doesn't have a date.</p> <p>19 MR. REALE: But it came out at or</p> <p>20 obviously before the OIG Report on cost</p> <p>21 containment strategies.</p> <p>22 MS. OBEREMBT: What was the date of</p>	<p style="text-align: right;">Page 375</p> <p>1 start from the top. Question 11 asks the</p> <p>2 Respondent to indicate whether or not the program</p> <p>3 has encountered each of the following barriers in</p> <p>4 seeking to implement drug cost containment</p> <p>5 strategies. Do you see that?</p> <p>6 A. I see No. 11, yes.</p> <p>7 Q. And one of the oppositions that has</p> <p>8 faced the Arkansas Medicaid Agency, according to</p> <p>9 this Respondent, has been opposition from</p> <p>10 pharmacies. Do you see that?</p> <p>11 MS. MOSLEY-SIMS: Objection.</p> <p>12 A. I do see it marked, yes.</p> <p>13 Q. (By Mr. Reale) And do you agree there</p> <p>14 has been, from time to time, opposition from</p> <p>15 pharmacies regarding drug cost containment</p> <p>16 strategies?</p> <p>17 MS. MOSLEY-SIMS: Objection.</p> <p>18 A. I can only say that whenever we tried</p> <p>19 to implement -- when we implemented the new</p> <p>20 reimbursement formula, there was opposition from</p> <p>21 pharmacies.</p> <p>22 Q. (By Mr. Reale) And if we look down to</p>
<p style="text-align: right;">Page 374</p> <p>1 that report?</p> <p>2 MR. REALE: It was in the 2000. I</p> <p>3 don't know off the top of my head.</p> <p>4 MS. OBEREMBT: Thank you.</p> <p>5 MR. REALE: You're welcome.</p> <p>6 Q. (By Mr. Reale) All right. Back to Ms.</p> <p>7 Bridges.</p> <p>8 A. Okay. It's hard to read this</p> <p>9 handwriting. I'm sorry.</p> <p>10 Q. Sure. But I want to first point out</p> <p>11 that the potential barriers that this Respondent</p> <p>12 has indicated with respect to drug cost</p> <p>13 containment are opposition from pharmacies. Do</p> <p>14 you see that? D is selected as yes. Has your</p> <p>15 program --</p> <p>16 A. I'm sorry. I was trying to read down</p> <p>17 below.</p> <p>18 MS. MOSLEY-SIMS: Objection.</p> <p>19 A. You said 11, and now you're -- you said</p> <p>20 Question 12, but you're reading off of 11, so</p> <p>21 you've got me confused.</p> <p>22 Q. (By Mr. Reale) Okay. Well, let me</p>	<p style="text-align: right;">Page 376</p> <p>1 Question 12, which asks, and I will repeat my</p> <p>2 earlier question -- what has helped or would help</p> <p>3 your State to overcome barriers to Medicaid cost</p> <p>4 containment listed above, we see a response from</p> <p>5 somebody purporting to act on Arkansas' behalf.</p> <p>6 Do you see that?</p> <p>7 MS. MOSLEY-SIMS: Objection.</p> <p>8 A. And again, this only shows AR. It</p> <p>9 doesn't show who filled it out or a date or who</p> <p>10 completed the survey, so what I'm going to say is</p> <p>11 I can only respond to yes, I see an answer on</p> <p>12 this page by whomever completed this survey.</p> <p>13 Q. And the answer that was provided was</p> <p>14 that CMS should be more aggressive about the</p> <p>15 measures they approve. Do you see that language?</p> <p>16 MS. MOSLEY-SIMS: Objection.</p> <p>17 A. I see that language.</p> <p>18 Q. (By Mr. Reale) And do you agree that</p> <p>19 CMS should be more aggressive about the measures</p> <p>20 they approve?</p> <p>21 MS. MOSLEY-SIMS: Objection.</p> <p>22 A. I don't even know how to answer that.</p>

11 (Pages 373 to 376)

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<p style="text-align: right;">Page 461</p> <p>1 but I don't know that that word is in it, but  2 that's --  3 Q. Well, why don't -- just, by now you  4 know that I would prefer not to reply on my word,  5 and let's take a look at --  6 A. It's going to be one of the bottom  7 ones.  8 Q. Yes, it will be.  9 A. It's No. 2, I think. I don't know if  10 it is.  11 Q. What is the second page of that, up at  12 the top, 447, Paragraph 204?  13 A. Uh-uh. That's not it.  14 Q. Let me see. Yes. If you look at the  15 top section --  16 A. Sorry.  17 Q. No. That's okay. And this access that  18 we've been talking about comes from a section in  19 the Code of Federal Regulations. And what is  20 that --  21 A. I'm sorry.  22 Q. And what is that regulation entitled?</p>	<p style="text-align: right;">Page 463</p> <p>1 so at the rates proposed by the State?  2 A. By their contract, they agree to accept  3 the rates proposed by the State.  4 Q. Right. But if you change those rates,  5 you need to make sure that providers will  6 continue to participate in the program.  7 Otherwise, it threatens the access mandate of  8 Federal regulations, correct?  9 A. We, as per the Code of Federal  10 Regulations, we -- the State will pursue their  11 best estimate on what will be sufficient to  12 maintain access for these providers, yes.  13 Q. And when the State determined in early  14 2001, 2002 time frame that it wanted to define  15 "estimated acquisition cost" as AWP minus 25  16 percent, ultimately, because access was  17 threatened, it had to resort to a definition of  18 AWP minus 20 percent, right?  19 MS. MOSLEY-SIMS: Objection, asked and  20 answered.  21 A. That's true. I mean, once it was  22 proposed, the pharmacists did say that they felt</p>
<p style="text-align: right;">Page 462</p> <p>1 A. "Encouragement of Provider  2 Participation".  3 Q. Right. So Arkansas has to set a  4 payment level that encourages or incentivizes  5 providers to participate in the program?  6 MS. MOSLEY-SIMS: Objection.  7 A. The agencies payments must be  8 sufficient to enlist enough providers to provide  9 services. I will agree with you there.  10 Q. (By Mr. Reale) Right. And because  11 Medicaid is voluntary, pharmacies can look at  12 that payment rate as being set by the State and  13 decide whether or not they want to participate in  14 the program?  15 A. They could.  16 Q. Now, there's also, as part of the  17 State's determination of estimated acquisition  18 costs, this concept of provider relations that  19 you've mentioned at several points. And by that,  20 you mean that you have to make sure that the  21 providers who are going dispense drugs to  22 Medicaid beneficiaries are going to agree to do</p>	<p style="text-align: right;">Page 464</p> <p>1 access would be an issue.  2 Q. (By Mr. Reale) So it's fair to say that  3 the State's determination of estimated  4 acquisition cost is a balance of all the factors  5 that we talked about today, not solely the cost  6 of the drug to some pharmacies?  7 A. Well, again, and I know I've said this  8 and repeated it a lot of times, but there is  9 always that variance off of the AWP. So we know  10 that AWP is discounted. We don't want to -- so  11 we're going to set something that's a balance  12 that will allow access to be maintained by the  13 providers.  14 Q. And it's a balance, on the one hand,  15 between Arkansas' own budget pressures and the  16 need to try to ensure the efficiency and economy  17 in its Medicaid program, and on the other hand,  18 we have pressures from providers who voluntarily  19 participate in the program and the need to ensure  20 that there's access for Medicaid patients. Would  21 you say that's a fair representation?  22 MS. MOSLEY-SIMS: Objection.</p>

33 (Pages 461 to 464)

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## Little Rock, A

<p style="text-align: right;">Page 465</p> <p>1 A. I would say it's a fair statement. I</p> <p>2 don't know if it's complete, but it's fair.</p> <p>3 Q. (By Mr. Reale) And there may be other</p> <p>4 factors that play in the cost, determination of</p> <p>5 estimated acquisition cost. Yes?</p> <p>6 A. There could be. Right off the top of</p> <p>7 my head, I don't have any answer for you.</p> <p>8 MR. REALE: Okay. I have no questions</p> <p>9 further at this time. I don't know if Eric or</p> <p>10 Anne want to go next, but I know you both have</p> <p>11 documents, so give me a minute to pull those out</p> <p>12 for you.</p> <p>13 MR. BERLIN: We do, and actually, we</p> <p>14 hadn't spoken as to which of us should go first.</p> <p>15 Anne, do you have a preference?</p> <p>16 MS. MANGIARDI: I don't. Either way.</p> <p>17 (Whereupon an off-the-record was held.)</p> <p>18 [Marked Exhibit Abbott-ARK 001]</p> <p>19</p> <p>20 EXAMINATION QUESTIONS BY MR. BERLIN:</p> <p>21 Q. First, actually, I've already forgot.</p> <p>22 You prefer Suzette, but if I have to call you by</p>	<p style="text-align: right;">Page 467</p> <p>1 area that you went over with Mr. Reale, and --</p> <p>2 and I will try to do that as efficiently as</p> <p>3 possible, wasting as little of your time as</p> <p>4 possible, but I just wanted to let you know that,</p> <p>5 so I don't think they're going to be precisely</p> <p>6 the same questions, but there will be some</p> <p>7 questions that are limited, and I wanted to let</p> <p>8 you know that up front so that you didn't become</p> <p>9 frustrated, that you may feel like you're</p> <p>10 answering something another time. Is that fine?</p> <p>11 A. I appreciate that. Thank you.</p> <p>12 Q. Okay. And the other thing is that</p> <p>13 sometimes I will refer back to the testimony that</p> <p>14 you gave yesterday and this morning, and I'll try</p> <p>15 to do that carefully, and I have absolutely no</p> <p>16 intent of misrepresenting your testimony, but if</p> <p>17 I do that, I would just ask you that you let me</p> <p>18 know, that you don't have to sit idly while I do</p> <p>19 that, and that for you to also know, if I do it,</p> <p>20 it's unintentional. Is that fine?</p> <p>21 A. Okay. Great.</p> <p>22 Q. Could you please look at Abbott Exhibit</p>
<p style="text-align: right;">Page 466</p> <p>1 your proper name, which would you prefer?</p> <p>2 A. Mrs. Bridges.</p> <p>3 Q. Okay. Let me just -- first of all, I</p> <p>4 introduced myself yesterday, but let me do that</p> <p>5 again. I'm Eric Berlin, and I'm with the firm of</p> <p>6 Jones Day, and we represent Abbott Laboratories</p> <p>7 in a few of the suits that are captioned on our</p> <p>8 subpoena. First of all, can you hear me well?</p> <p>9 A. Yes, I can.</p> <p>10 Q. Great. And because I'm a bit away, I</p> <p>11 won't always be able to tell when you're about to</p> <p>12 speak or sometimes when you're not done speaking,</p> <p>13 and I'll try to be careful not to step on your</p> <p>14 words, and I would just ask that you do the same</p> <p>15 for me. As you see it's important that we have</p> <p>16 the full record. Is that fine?</p> <p>17 A. I'm trying very hard to do that.</p> <p>18 Q. That's all I can ask you to do, and I</p> <p>19 appreciate that. The other thing is that my</p> <p>20 client is not going to trial together with Mr.</p> <p>21 Reale's client or the other Defendants involved</p> <p>22 here, so I'm going to have to retread some of the</p>	<p style="text-align: right;">Page 468</p> <p>1 1, and let me know whether you have seen this</p> <p>2 document before?</p> <p>3 A. Yes, sir.</p> <p>4 Q. When did you see this document?</p> <p>5 A. As far as a specific time, I don't know</p> <p>6 the exact date or time that I received it.</p> <p>7 Q. You understand that you are designated</p> <p>8 as the representative from Arkansas, the Arkansas</p> <p>9 Department of Human Services, to testify about</p> <p>10 these topics as the sort of government</p> <p>11 organizational representative, right?</p> <p>12 A. I do.</p> <p>13 Q. And occasionally I'm going refer to you</p> <p>14 as you, but when all of this testimony is -- I'm</p> <p>15 seeking is your knowledge as the representative</p> <p>16 as opposed to your particular knowledge. Do you</p> <p>17 understand?</p> <p>18 A. Yes.</p> <p>19 Q. Great. Thanks a lot. Bear with me for</p> <p>20 a moment, please. The first thing I would</p> <p>21 actually like to cover with you is the State MAC.</p> <p>22 MAC stands for Maximum Allowable Cost, correct?</p>

34 (Pages 465 to 468)

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